



## Broadcasting Decision CRTC 2007-195

Ottawa, 20 June 2007

**CJRN 710 Inc.**  
Fort Erie, Ontario

*Application 2005-0810-4, received 4 July 2005  
Public Hearing in the National Capital Region  
27 March 2007*

### **CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines, from 1 July 2007 to 31 August 2009. This short-term renewal will allow the Commission to assess, at an earlier date, the licensee's compliance with its conditions of licence.*

#### **The application**

1. The Commission received an application by CJRN 710 Inc. (CJRN) to renew the broadcasting licence for the English-language commercial radio programming undertaking CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines, which expires 30 June 2007. In Broadcasting Decisions 2005-29 and 2006-354, the Commission renewed this licence to 31 August 2006, and 30 June 2007, respectively.
2. The Commission considers that the main issue to be dealt with in this decision is the licensee's apparent non-compliance with its condition of licence related to the provision of local programming.

#### **History of non-compliance**

3. The licensee is currently subject to the conditions of licence set out in Public Notice 1999-137. Condition of licence number 9 provides that CJRN must refrain from soliciting or accepting local advertising for broadcast on CKEY-FM during any broadcast week when less than one-third of the programming aired is local. While the Commission set out a revised definition of local programming in Broadcasting Public Notice 2006-158, the definition of local programming that was applicable to CKEY-FM when the Commission monitored its programming is the former definition, set out in Public Notice 1993-38, as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast either simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.

4. In Broadcasting Decision 2005-29, the Commission set out its findings that CJRN had breached the *Radio Regulations, 1986* (the Regulations), with respect to the provision of program logs and music lists. In that decision, the Commission also noted that it was not satisfied with the level of local service provided by CKEY-FM to the Fort Erie and Niagara region market, and that CJRN had failed to demonstrate its compliance with condition of licence number 9. In view of all of these factors, the licence for CKEY-FM was renewed for a short term, and the Commission imposed a condition of licence requiring the licensee to broadcast at least three hours of news in each broadcast week.

#### **Non-compliance in the current licence term**

5. During the current licence term, CKEY-FM remained subject to the conditions of licence as discussed above. The Commission analysed the programming broadcast on CKEY-FM twice during the licence term; once in 2005 and once in 2006.
6. Both analyses indicated that the licensee was operating in compliance with the Regulations, with respect to the provision of music logs, music lists and with the broadcast of Canadian music.

#### **Programming broadcast during the week beginning 29 May 2005**

7. The results of the analysis undertaken for the programming broadcast on CKEY-FM during the week of 29 May to 4 June 2005 revealed non-compliance with the condition of licence requiring the broadcast of at least 3 hours of news programming in each broadcast week. In a letter dated 31 October 2005, the Commission provided analysis results that found a total of only 1 hour and 22 minutes of news programming broadcast during the week of 29 May to 4 June 2005.
8. In a letter dated 7 November 2005, CJRN acknowledged the overall monitoring results for the week in question, but reserved comment on the alleged non-compliance with the three hour per week news condition of licence, pending its review of the news analysis undertaken by the Commission. In a letter dated 15 November 2005, the licensee subsequently provided its comments on the news analysis. It outlined a number of steps it had undertaken to bring the station into compliance with its condition of licence respecting the broadcast of news programming. These included:

- Hiring additional news and on-air staff
- Contracting for weather and traffic reporting services
- Rescheduling of news, weather and sports reports and content, on an hourly basis.

9. Further, CJRN provided comments on what it believed constituted acceptable news content and expressed its view that news content included surveillance material such as weather and sports. It also requested the provision of interpretive documents or guidelines from the Commission, in order to ensure its future compliance with its condition of licence related to news programming.
10. The Commission acknowledged some of the licensee's concerns, and subsequently revised the total of news programming broadcast during the week of 29 May to 4 June 2005. The revised total of 1 hour and 34 minutes, however, still represented non-compliance with the condition of licence requiring the broadcast of 3 hours of news programming during each week.

#### **Programming broadcast during the week beginning 26 February 2006**

11. Programming broadcast during the week of 26 February to 4 March 2006 was also analysed, and the results showed that the licensee was in compliance with the condition of its licence requiring the broadcast of at least 3 hours of news in each broadcast week. However, the licensee was advised that analysis of the news programming broadcast revealed concerns regarding CJRN's compliance with condition of licence number 9. The analysis found that, of 187 news items broadcast during the week in question, only 4 were determined to be local stories. Further, CJRN was advised that the analysis failed to reveal any local sports or local community event reporting that related directly to the local service area of Fort Erie and the Niagara Falls region.
12. In a letter dated 15 June 2006, CJRN questioned the Commission's findings, asserting that since all programming broadcast on CKEY-FM is prepared by the licensee's staff for exclusive broadcast on CKEY-FM, all programming should qualify as local, under the definition of local programming set out in Public Notice 1993-38.

#### **Commission's analysis**

13. Based on the results of the 2005 and 2006 analyses, CJRN was called to appear at the 27 March 2007 public hearing to show cause why a mandatory order should not be issued requiring the licensee to provide a sufficient level of local programming oriented to Fort Erie and the Niagara region, as required by condition of licence number 9.
14. The Commission received one intervention to this application, submitted by Mr. James Christman, a former employee of CJRN. Mr. Christman expressed general comments with respect to the lack of local news and content of relevance to Fort Erie broadcast by CKEY-FM.

15. In response to Mr. Christman's comments, CJRN expressed the view that the intervener's comments were unfounded.
16. Based on its analyses conducted in 2005 and 2006, the Commission finds that CJRN was not in compliance at all times during the current licence term with condition of licence number 9 with respect to the provision of local programming, requiring the broadcast of spoken word material of direct and particular relevance to the community served.

**Licensee's response to its non-compliance**

17. At the hearing, the licensee noted that, in addition to the measures noted in its letter dated 15 November 2005, it had since instituted a number of additional measures to address compliance issues. These measures included:
  - exclusion of entertainment news and surveillance material from calculation of time devoted to news,
  - programming of an additional 10% of news content each week, to reduce the possibility of a shortfall,
  - replacement of news staff,
  - a new morning show team that provides regular local surveillance such as traffic, weather, local school closures as well as two newscasts each hour,
  - development of an hourly community calendar focussing on events and activities such as concerts, entertainment and lifestyle information of relevance to the Niagara Peninsula, and
  - development of a policy that requires all on-air staff to ensure that at least 30% of all spoken word content is local.
18. The Commission also notes CJRN's commitment to expand and "contextualize" locally oriented news stories, to ensure that they qualify as being of direct and particular relevance to the community served by CKEY-FM. The Commission also notes the licensee's commitment to respect the amended definition of local programming as set out in Broadcasting Public Notice 2006-158, and to include local sports and the promotion of local events and activities in the spoken word programming broadcast by CKEY-FM.
19. Further, the Commission notes the licensee's statement at the hearing that:

...for example if border security is discussed, we will specifically talk about how it relates to Fort Erie or Niagara Falls or a specific area within our market. So now we are actually taking a story that was maybe locally relevant before and now we are making it particular to the market and specific to the market.
20. The Commission further reminds CJRN that:
  - a) some level of analysis or background must be included to make a locally relevant news story a local news item of direct and particular relevance to the community, and

- b) that a simple tag identifying a community at the end of what CKEY-FM would consider a locally relevant news story is not sufficient to make the item of direct and particular relevance to the community CKEY-FM is licensed to serve.

- 21. The Commission also notes that, during the current licence term, the programming staff of CKEY-FM was augmented, allowing the station to increase its live-to-air presence and ensure that the station provides 126 hours each week of local programming. The Commission notes that CKEY-FM now has six full-time and two part-time staff members, including one full-time weekday, and two part-time weekend news staff.

#### **Challenges faced by CKEY-FM**

- 22. At the hearing, the licensee noted that with respect to news content, in its view CKEY-FM faces challenges and difficulties as a youth-oriented station. CJRN indicated that spoken word in general and hard news content in particular is neither a core element for a CHR (contemporary hit radio) format, nor an important element for the format's primary youth and young adult target audience.
- 23. The Commission recognizes that stations programming formats of particular interest to a youth and young adult audience face challenges in developing relevant news and information content. However, the Commission also notes that a number of successful stations of this type are currently operating in compliance with condition of licence number 9. They do so, in part by providing sufficient levels of local news and information, albeit in non-conventional styles of presentation. This suggests that not all licensees serving a younger demographic share CJRN's view that news and information content is a "turn off" for this audience and represents a programming burden for licensees offering CHR and other youth- and young adult-oriented formats.

#### **Commission's determination**

- 24. The Commission is satisfied that the measures and commitments CJRN has put in place and as set out above will enable the licensee to ensure compliance with local programming requirements as set out in condition of licence number 9. In addition, the Commission has re-imposed, by condition of licence, a requirement that the licensee broadcast, at a minimum, 3 hours of news content during each broadcast week. In addition, the Commission has imposed, by condition of licence, a new requirement, that 30% of the three hours of news must be of direct and particular relevance to CKEY-FM's licensed area. The Commission is satisfied that the licensee's measures and commitments, together with the two conditions of licence with respect to news will enable it to assess clearly CJRN's performance in this regard. Based on these factors, the Commission concludes that it is not necessary to impose a mandatory order at this time.
- 25. In light of the above, the Commission **renews** the broadcasting licence for the English-language commercial radio programming undertaking CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines, from 1 July 2007 to 31 August 2009.

26. The Commission's decision to impose a short-term renewal period is consistent with its policy on renewals of licences held by licensees determined to be in non-compliance, as set out in Circular No. 444, and will allow it to monitor the programming of the station in the short term, in order to ensure the licensee's compliance with the conditions of its licence.
27. The Commission notes that, during the new licence term, CKEY-FM will remain subject to condition of licence number 9 as set out in Public Notice 1999-137, which requires the licensee to refrain from soliciting or accepting local advertising for broadcast during any broadcast week when less than one-third of the programming aired is local programming. For the purposes of that condition, CKEY-FM will be subject to the revised definition of local programming contained in Broadcasting Public Notice 2006-158, set out in the appendix to this decision.
28. Further, as noted above, the licensee shall continue to be subject to a **condition of licence** requiring the broadcast of a minimum of three hours of news programming during each broadcast week. During the new licence term, of that amount, at least 30% (54 minutes) must be devoted to local news of direct and particular relevance to the community CKEY-FM is licensed to serve, namely Fort Erie and the Niagara region. In assessing compliance with this condition, the Commission reminds the licensee that locally oriented news stories must be "contextualized", to ensure that they qualify as being of direct and particular relevance to the community served by CKEY-FM. The Commission further reminds CJRN that some level of analysis or background must be included to accomplish this goal, and that a simple identification of a community is not sufficient to do so.

## **Other matters**

### **Canadian content development**

29. In Broadcasting Public Notice 2006-158, the Commission set out a new approach to the development and promotion of Canadian artists. In order to reflect a new emphasis on development initiatives that lead to the creation of audio content for broadcast using Canadian resources, the Commission replaced the expression "Canadian talent development" with "Canadian content development" (CCD). Under the new policy, each radio station holding a commercial radio licence is required to make a basic annual CCD contribution based on its total broadcast revenues in the previous broadcast year. This requirement will be reflected in the the Regulations. Until such time, it will be implemented by a transitional condition of licence that will expire upon the coming into force of the amendments to the Regulations.
30. The Commission reminds the licensee that any development initiatives that have not been allocated to specific parties by condition of licence must be allocated to the support, promotion, training and development of Canadian musical and spoken word talent, including journalists. Parties and initiatives eligible for CCD funding are identified in paragraph 108 of Broadcasting Public Notice 2006-158.

Secretary General

**Related documents**

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Administrative renewal*, Broadcasting Decision CRTC 2006-354, 11 August 2006
- *CKEY-FM Fort Erie and its transmitter CKEY-FM-1 St. Catharines – Licence renewal*, Broadcasting Decision CRTC 2005-29, 31 January 2005
- *Practices regarding radio non-compliance*, Circular No. 444, 7 May 2001
- *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999
- *Policies for local programming on commercial radio stations and advertising on campus stations*, Public Notice CRTC 1993-38, 19 April 1993

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

# Appendix to Broadcasting Decision CRTC 2007-195

## Terms, conditions of licence and encouragement

Renewal of the licence for CKEY-FM Fort Erie and its transmitter  
CKEY-FM-1 St. Catharines

### Terms

The licence for the above-mentioned undertaking will expire 31 August 2009.

### Conditions of licence

1. The licence will be subject to the conditions of licence set out in *New licence form for commercial radio stations*, Public Notice CRTC 1999-137, 24 August 1999 (Public Notice 1999-137), with the exception of condition of licence number 5.
2. The licensee shall make a basic annual contribution to Canadian content development (CCD). The amount of the contribution shall be determined in accordance with the policy set out in *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006 (Public Notice 2006-158), as amended from time to time.

The licensee shall allocate 60% of this basic annual CCD contribution to FACTOR or MUSICATION.

The remainder of the annual basic contribution to CCD may be allocated to parties and initiatives fulfilling the definition of eligible initiatives in Broadcasting Public Notice 2006-158.

This condition of licence shall expire upon the coming into force of the amendments to the *Radio Regulations, 1986* relating to CCD.

3. For the purposes of condition of licence number 9 set out in Public Notice 1999-137, the definition of local programming shall be as set out in Broadcasting Public Notice 2006-158, as follows:

Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It does not include programming received from another station and rebroadcast simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.

In their local programming, licensees must incorporate spoken word material of direct and particular relevance to the community served. This must include local news, weather, sports coverage, and the promotion of local events and activities.

4. During each broadcast week, the licensee shall broadcast at a minimum, three hours of news programming. Of this amount, a minimum of 30% (54 minutes) each week must be devoted to local news of direct and particular relevance to Fort Erie and the Niagara region.

### **Encouragement**

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.